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COMMISSION  
CLERK

-M-E-M-O-R-A-N-D-U-M-

**DATE:** February 17, 2009

**TO:** Anna Williams, Attorney, Office of General Counsel

**FROM:** Division of Regulatory Compliance (Freeman, Vandiver) *W*

**RE:** Docket 090001-EI, Recommendation concerning Tampa Electric Company's (TECO's) request for confidential classification and motion for protective order concerning a portion of the staff audit working papers prepared during "Tampa Electric Company Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007", Audit Control No. 08-003-2-2, Documents Numbered 02651-08, 02652-08, 02666-08 and 00660-09

On April 3, 2008, when copies of certain portions of staff's audit report and working papers obtained or prepared during the "Tampa Electric Company Fuel Adjustment Clause Audit for the Historical Year Ended December 31, 2007", were delivered to TECO at the audit exit conference, the utility requested that these materials be temporarily exempted from public access in accordance with provisions of Rule 25-22.006(3)(a)2., Florida Administrative Code (FAC).

On April 7, 2008, staff filed documents numbered 02651-08, 02652-08, and 02666-08 consisting of those specified portions of the staff's audit report and working papers.

On April 25, 2008, TECO filed a request pursuant to Section 366.093, Florida Statutes (F.S) and Rule 25-22.006, FAC, that selected portions of the audit working papers prepared by the staff during the audit receive a confidential classification.

On or about May 9, 2008, the Office of Public Counsel (Merchant) requested and received a copy of confidential documents 02651-08, 2652-08 and 02666-08. Also on May 9, 2008, pursuant to Rule 25-22.006(6)(c), FAC, TECO motioned that the Commission issue a protective order such that the sensitive audit materials would be held by the Office of Public Counsel as confidential.

On January 27, 2009, after discussions with the staff, TECO revised its request. The utility's revision included redacted copies for public inspection (Document No. 00660-09) and copies with the sensitive information highlighted (Document No. 00661-09).

On February 11, 2009, while reviewing TECO's request, staff discovered the field auditor had retained vendor bank account numbers within staff's working papers. Pursuant to Section 19.071(5)(b), Florida Statutes, bank account numbers in the possession of a state agency are *per se* confidential. Once identified, bank account numbers found within TECO's materials were returned to the utility.

COM \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 RCP \_\_\_\_\_  
 SSC \_\_\_\_\_  
 SGA \_\_\_\_\_  
 ADM \_\_\_\_\_  
 CLK *McLean*

DOCUMENT NUMBER-DATE

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Documents numbered 02651-08, 02652-08, 02666-08 and 00660-09 are currently held by the Office of the Commission Clerk as confidential pending resolution of FPL's request for confidential classification.

Pursuant to Section 119.07, F.S., documents submitted to this Commission are public records. The only exceptions to this law are specific statutory exemptions and exemptions granted by governmental agencies pursuant to the specific items of a statutory provision. Subsections 366.093(3)(d) and (e), F.S., provide the following exemptions.

Section 366.093, F.S., provides; "*Proprietary confidential business information means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes but is not limited to:*

....

*(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility or its affiliates to contract for goods or services on favorable terms.*

*(e) Information relating to competitive business interests, the disclosure of which would impair the competitive business of the provider of the information...."*

According to Section 366.093, F.S., and Rule 25-22.006, FAC, the utility has the burden of demonstrating that materials qualify for confidential classification. According to Rule 25-22.006, FAC, the utility must meet this burden by demonstrating that the information is proprietary confidential business information, the disclosure of which will cause the utility, the provider of the information or the ratepayer harm.

### **Staff Analysis of the Request**

Reading the filing reveals the sensitive material consists of:

#### 1) Contracted Fuel Prices by Supplier

TECO asserts that "...Commodity rates and contract prices have been recognized by the Commission on numerous occasions to constitute proprietary confidential business information, the disclosure of which would be harmful to Tampa electric's ability to contract for goods and services on favorable terms and, likewise, harmful to the competitive interests of Tampa electric and its suppliers...."

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Section 366.093(3)(d), F.S., provides the Commission may grant a confidential classification to sensitive contractual materials if their release would impair the ability the efforts of TECO or its affiliates to contract for goods and services on favorable terms. Section 366.093(3)(e), F.S., provides the Commission may grant a confidential classification to sensitive competitive business information if release of that information would harm the competitive business of the provider of that information. Reading the information concerning fuel prices reveals release of the information could reasonably be expected to impair the ability of TECO and its affiliates to contract for fuels and also impair the competitive business of the provider of that information. Therefore we recommend that this information be granted a confidential classification.

### 2) Planned Operations and Existing Contractual Data (such as Trucking Rates)

TECO asserts "...Public disclosure of information contained on these pages would adversely affect the competitive interests of Tampa Electric and its ability to contract for goods and services on favorable terms. The disclosure of this information would therefore be harmful to competitive interests, and as such, the information is entitled to confidential treatment..."

Section 366.093(3)(d), F.S., provides contractual information may be granted a confidential classification if release of the information would impair the ability of a utility or its affiliates ability to favorably contract. Section 366.093(3)(e), F.S., provides sensitive business information may be granted a confidential classification if its release would harm the competitive business of the provider of that information. Reading the sensitive information reveals that its release would reasonably be expected to cause the contractual effects and competitive business harm that TECO suggests. Therefore, staff recommends that this material be granted a confidential classification.

### 3) Competitively Sensitive Account Numbers and Wiring Information

TECO asserts this information could be used for fraudulent purposes and is therefore sensitive competitive operating information. The information in question concerns contractual data, the disclosure of which would impair Tampa electric's future efforts to contract for goods and services on favorable terms.

Reading the sensitive information reveals it is sensitive contractual and competitive business information and thus qualifies for a confidential classification pursuant to the provisions of Subsections 366.093(d) and (e), F.S. Therefore, staff recommends that this material be granted a confidential classification.

### **Information Held as Confidential**

TECO asserts this material meets the statutory definition of "proprietary confidential business information" and is entitled to protection pursuant to the provisions set out within Section 366.093, Florida Statutes, and within Rule 25-22.006, FAC.

**Motion for a Temporary Protective Order**

The staff attorneys within the Office of General Counsel have the responsibility of processing TECO's motion for a protective order. However, technical staff have no objection to issuing a protective order covering the information identified within the staff audit materials and further notes a redacted public copy of the information is available within Commission Document No. 00661-09, filed January 27, 2009, in docket No. 090001-EI.

**Duration of the Confidential Classification Period**

TECO requests that this material be held as confidential for at least 18 months. According to the provisions of Section 366.093(4), F.S., absent good cause shown, confidential classification is limited to 18 months. TECO's request is reasonable and within the statutory guidelines, and therefore, staff recommends TECO's request for an 18 month classification period be granted.

**Staff Recommendation**

Based upon reading the filing, and for the reasons presented above, we recommend the utility's request be granted and that the identified material be granted a confidential classification for 18 months.

A detailed item-by-item recommendation, as found, follows:

**Detailed Recommendation, as found**

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
<b>Documents 02651-08 and 00660-09</b>					
✓ 10-2/1	Fuel Price Information	1-17	3 Columns	Grant	Sensitive Contractual and Competitive Business Information
✓ 10-9/1-1	Planned Expenditure and Trucking Rate	34	2 Columns	Grant	Sensitive Contractual and Competitive Business Information
10-19/1-1	Transportation Cost	20-25	2 Columns	Grant	Sensitive Contractual and Competitive Business Information
10-19/2-1	Transportation Cost	23-26	2 Columns	Grant	Sensitive Contractual and Competitive Business Information
<b>Documents No. 02652-08 and 0660-09</b>					
10-31/1-1	Purchased Power	1	1 Area	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents No. 02652-08 and 0660-09					
25-3/2	Planned Expenditure and Trucking Rate	1-8	12 Columns	Grant	Sensitive Contractual and Competitive Business Information
25/6-1	Fuel Price Information	1,3,5,6-9, 11,13,14, 15,22,26, 28,32	1 Area	Grant	Sensitive Contractual and Competitive Business Information
25-7/1	Fuel Price Information	1-3	3 Lines	Grant	Sensitive Contractual and Competitive Business Information
25-8/1	Fuel Price Information	4,7,13,15, 16,17,20, 22,25,26, 28,29,35, 36,37	1 Area	Grant	Sensitive Contractual and Competitive Business Information
25-9/1	Fuel Price Information	1-2	2 Lines	Grant	Sensitive Contractual and Competitive Business Information
25-10/1	Fuel Price Information	1-2,5	3 Lines	Grant	Sensitive Contractual and Competitive Business Information
✓ 25-11/2-1	Fuel Price Information	2	3 lines	Grant	Sensitive Contractual and Competitive Business Information
25-11/2-2	Fuel Price Information	1	1 Area	Grant	Sensitive Contractual and Competitive Business Information
26-6	Fuel Price Information	1	Cols. H-O	Grant	Sensitive Contractual and Competitive Business Information
26-6/1-1	Fuel Price Information	1-2	1 Line; 2 Columns	Grant	Sensitive Contractual and Competitive Business Information
26-6/2-1	Fuel Price Information	1	1 Line; 2 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/2	Fuel Price Information	1	4 Lines	Grant	Sensitive Contractual and Competitive Business Information
43-5/2-1	Fuel Price Information	1-6	1 Area	Grant	Sensitive Contractual and Competitive Business Information
43-5/2-2	Fuel Price Information	1-12	1 Area	Grant	Sensitive Contractual and Competitive Business Information
43-5/2-3	Fuel Price Information	1-2	3 Areas	Grant	Sensitive Contractual and Competitive Business Information
42-5/3	Fuel Price Information	1	2 Areas	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents No. 02652-08 and 0660-09					
43-5/3-1	Fuel Price Information	1	6 Areas	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	2	2 Areas; 3 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	3	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	4	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	5	2 Areas; 1 Line	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	6	8 Lines; 1 Area	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	7	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	8	2 Lines; 2 Areas	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	9	6 Lines; 3 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	10	1 Area; 6 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	11	4 lines	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	12	1 Area; 6 columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	13	4 Columns; 4 Lines	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	14	5 Columns; 1 Area	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	15	6 Lines	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	16	6 Areas; 6 Lines	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	17	5 Columns	Grant	Sensitive Contractual and Competitive Business Information

Staff Work Paper Number	Description	Page(s)	Line(s)	Recommend	Type of Information
Documents No. 02652-08 and 0660-09					
43-5/3-1	Fuel Price Information	18	4 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	19	2 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	20	6 columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	21	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	22	6 columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	23	5 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	24	7 Columns	Grant	Sensitive Contractual and Competitive Business Information
43-5/3-1	Fuel Price Information	25	6 Lines; 1 Area	Grant	Sensitive Contractual and Competitive Business Information

A temporary copy of this recommendation will be held at I:02666-08 TECO 2007 fuel raf.doc for a short period.

CC: Division of Regulatory Compliance (Rohrbacher)  
Office of the Commission Clerk (Cole, McLean)